

BEFORE THE
POSTAL REGULATORY COMMISSION

Periodic Reporting (Proposal Seven)

⋮

Docket No. RM2021-1

UNITED PARCEL SERVICE, INC.'S MOTION REQUESTING
ACCESS TO NON-PUBLIC MATERIALS UNDER
PROTECTIVE CONDITIONS
(December 8, 2020)

United Parcel Service, Inc. ("UPS") respectfully submits this Motion pursuant to 39 C.F.R. § 3011.301¹ requesting access to non-public materials in this docket which the United States Postal Service filed with the Commission on November 9, 2020.² Specifically, UPS requests access to the full, unredacted versions of USPS-RM2021-1-NP1 (Nonpublic Material Relating to Proposal Seven).

UPS seeks access to the materials for its outside counsel and consultants only, so they may assist UPS in making informed comments in this docket. See Notice of Proposed Rulemaking on Analytical Principles Used in Periodic Reporting (Proposal Seven), Dkt. No. RM2021-1 (Nov. 18, 2020) ("Order No. 5756") at 3-4 (inviting

¹ The Commission has reorganized and amended certain regulations effective April 20, 2020. See Reorganization of Postal Regulatory Commission Rules, 85 Fed. Reg. 9615 (Feb. 19, 2020), <https://www.govinfo.gov/content/pkg/FR-2020-02-19/pdf/2020-01055.pdf>. The sections dealing with non-public materials that were previously located in 39 CFR part 3007 are now located in part 3011. *Id.*

² See Petition of the United States Postal Service for the Initiation of a Proceeding to Consider Proposed Changes in Analytical Principles (Proposal Seven), Dkt. No. RM2021-1 (Nov. 9, 2020) ("Petition"), at 2, 7; Notice of Filing of USPS-RM2021-1-NP1 and Application for Nonpublic Treatment, Dkt. No. RM2021-1 (Nov. 9, 2020), at 1.

comments). These outside counsel and consultants are identified in Exhibit 1 to this motion and each has executed a copy of the Commission's protective order conditions.³

In determining whether to grant access to non-public data, the Commission "shall balance the interests of the parties consistent with the analysis undertaken by a Federal court when applying the protective conditions appearing in Federal Rule of Civil Procedure 26(c)." See 39 C.F.R. § 3011.301(e). UPS's request satisfies this test. The requested materials are relevant to assessing whether the Postal Service's proposed updates to variabilities for certain types of purchased highway transportation contracts comply with the mandate of the Postal Accountability and Enhancement Act ("PAEA") that the Postal Service's competitive products pay their own costs, without subsidy from market-dominant products (see 39 U.S.C. § 3633), and UPS has a substantial interest in the subject matter of this docket.

The impacts of Proposal Seven, as summarized in Tables 4 and 5 of the Petition, indicate significant changes to the costs of competitive products, as well as other products. Access to the materials filed under seal in USPS-RM2021-1-NP1 is necessary to further understand the nature of these changes. The materials filed under seal in USPS-RM2021-1-NP1 are similar to the non-public cost information regarding competitive products to which UPS has been previously granted access in ACR2019.⁴

³ UPS specifies that it did not provide notice of its Motion for Access prior to this filing to each person identified in the Postal Service's application for nonpublic treatment pursuant to 39 C.F.R. § 3011.201(b)(2).

⁴ Notice of Filing of USPS-RM2021-1-NP1 and Application for Nonpublic Treatment, Dkt. No. RM2021-1 (Nov. 9, 2020), at 1 (incorporating by reference the Postal Service's Application for Nonpublic Treatment of Materials contained in Attachment Two to the United States Postal Service Fiscal Year 2019 Annual Compliance Report, filed on December 27, 2019); Order Granting Motion for Access, Dkt. No. ACR2019 (Jan. 29, 2020) (Order No. 5416) (granting UPS access to certain nonpublic library references).

Without these materials UPS will be unable to meaningfully comment on whether the results are in compliance with the applicable provisions. See Order No. 5756 at 3-4.

For the foregoing reasons, UPS respectfully requests that this Motion be granted. UPS's comments and expert materials will be more meaningful, helpful to the Commission, and complete if access to these materials is granted.

Respectfully submitted,

UNITED PARCEL SERVICE, INC.,

By: /s/ Steig D. Olson
Steig D. Olson
Quinn Emanuel Urquhart & Sullivan, LLP
51 Madison Ave., 22nd Floor
New York, NY 10010
(212) 849-7152
steigolson@quinnemanuel.com

Attorney for UPS

Exhibit 1

1. Steig Olson
2. David LeRay
3. Christopher Seck
4. Andrew Sutton
5. Kathleen Lanigan
6. Jianjian Ye
7. D'Andrea Green
8. Nicholas Powers
9. Kevin Neels
10. Findley Bowie
11. Ezra Frankel
12. Michael Span
13. Misha Mubashar Khan
14. Bogdan Genchev
15. Marianne Gray

Protective Conditions Statement

The Postal Service requested confidential treatment of non-public materials identified as USPS-RM2021-1-NP1 (Nonpublic Material Relating to Proposal Seven). UPS (“the movant”) requests access to these materials in connection with preparing its comments in Docket No. RM2021-1.

The movant has provided to each person seeking access to these materials:

- this Protective Conditions Statement,
- the Certification to Comply with Protective Conditions,
- the Certification of Compliance with Protective Conditions and Termination of Access; and
- the Commission’s rules applicable to access to non-public materials filed in Commission proceedings (subpart C of part 3011 of the U.S. Code of Federal Regulations).

Each person (and any individual working on behalf of that person) seeking access to these materials has executed a Certification to Comply with Protective Conditions by signing in ink or by typing /s/ before his or her name in the signature block. The movant attaches the Protective Conditions Statement and the executed Certification(s) to Comply with Protective Conditions to the motion for access filed with the Commission.

The movant and each person seeking access to these materials agree to comply with the following protective conditions:

1. In accordance with 39 CFR 3011.303, the Commission may impose sanctions on any person who violates these protective conditions, the persons or entities on whose behalf the person was acting, or both.
2. In accordance with 39 CFR 3011.300(b), no person involved in competitive decision-making for any individual or entity that might gain competitive advantage from using these materials shall be granted access to these materials. Involved in competitive decision-making includes consulting on marketing or advertising strategies, pricing, product research and development, product design, or the competitive structuring and composition of bids, offers or proposals. It does not include rendering legal advice or performing other services that are not directly in furtherance of

activities in competition with an individual or entity having a proprietary interest in the protected material.

3. In accordance with 39 CFR 3011.302(a), a person granted access to these materials may not disseminate these materials in whole or in part to any person not allowed access pursuant to 39 CFR 3011.300(a) (Commission and court personnel) or 3011.301 (other persons granted access by Commission order) except in compliance with:

- a. Specific Commission order,
- b. Subpart B of 39 CFR 3011 (procedure for filing these materials in Commission proceedings), or
- c. 39 CFR 3011.305 (production of these materials in a court or other administrative proceeding).

4. In accordance with 39 CFR 3011.302(b) and (c), all persons granted access to these materials:

- a. must use these materials only related to this matter; and
- b. must protect these materials from any person not authorized to obtain access under 39 CFR 3011.300 or 3011.301 by using the same degree of care, but no less than a reasonable degree of care, to prevent the unauthorized disclosure of these materials as those persons, in the ordinary course of business, would be expected to use to protect their own proprietary material or trade secrets and other internal, confidential, commercially sensitive, and privileged information.

5. The duties of each person granted access to these materials apply to all:

- a. Disclosures or duplications of these materials in writing, orally, electronically, or otherwise, by any means, format, or medium;
- b. Excerpts from, parts of, or the entirety of these materials;
- c. Written materials that quote or contain these materials; and
- d. Revised, amended, or supplemental versions of these materials.

6. All copies of these materials will be clearly marked as "Confidential" and bear the name of the person granted access.

7. Immediately after access has terminated pursuant to 39 CFR 3011.304(a)(1), each person (and any individual working on behalf of that person) who

has obtained a copy of these materials must execute the Certification of Compliance with Protective Conditions and Termination of Access. In compliance with 39 CFR 3011.304(a)(2), the movant will attach the executed Certification(s) of Compliance with Protective Conditions and Termination of Access to the notice of termination of access filed with the Commission.

8. Each person granted access to these materials consents to these or such other conditions as the Commission may approve.

Respectfully submitted,

UNITED PARCEL SERVICE, INC.,

By: /s/ Steig D. Olson
Steig D. Olson
Quinn Emanuel Urquhart & Sullivan, LLP
51 Madison Ave., 22nd Floor
New York, NY 10010
(212) 849-7152
steigolson@quinnemanuel.com


Attorney for UPS

CERTIFICATION

The undersigned represents that:

Access to these materials provided in the matter identified as Commission Docket No. RM2021-1 has been authorized by the Commission. The cover or label of the copy obtained is marked with my name. I agree to use the information only for purposes of analyzing matters at issue in the matter identified as Commission Docket No. RM2021-1.

I certify that I have read and understand the protective conditions statement and this certification to comply with protective conditions. I certify that I am eligible to receive access to materials because I am not involved in competitive decision-making for any individual or entity that might gain competitive advantage from using these materials. I further agree to comply with all protective conditions and will maintain these materials in strict confidence in accordance with all of the protective conditions set out above.


Name	<u>Steig D. Olson</u>
Firm	<u>Quinn Emanuel Urquhart & Sullivan LLP</u>
Title	<u>Partner</u>
Representing	<u>United Parcel Service</u>
Signature	<u></u>
Date	<u>12/02/2020</u>

CERTIFICATION

The undersigned represents that:

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Name	<u>David LeRay</u>
Firm	<u>Quinn Emanuel Urquhart & Sullivan</u>
Title	<u>Associate</u>
Representing	<u>United Parcel Service</u>
Signature	 <u></u>
Date	<u>12/08/2020</u>

CERTIFICATION

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Name	<u>Christopher Mun-Yin Seck</u>
Firm	<u>Quinn Emanuel Urquhart & Sullivan, LLP</u>
Title	<u>Associate</u>
Representing	<u>United Parcel Service</u>
Signature	<u></u>
Date	<u>Dec. 2, 2020</u>

CERTIFICATION

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Name	<u>Andrew Sutton</u>
Firm	<u>Quinn Emanuel Urquhart & Sullivan</u>
Title	<u>Associate</u>
Representing	<u>United Parcel Service</u>
Signature	
Date	<u>December 8, 2020</u>

CERTIFICATION

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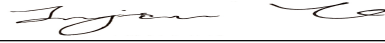
Name	<u>Kathleen Lanigan</u>
Firm	<u>Quinn Emanuel Urquhart & Sullivan</u>
Title	<u>Associate</u>
Representing	<u>United Parcel Service</u>
Signature	<u></u>
Date	<u>December 2, 2020</u>

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Name	<u>Jianjian Ye</u>
Firm	<u>Quinn Emanuel Urquhart & Sullivan</u>
Title	<u>Associate</u>
Representing	<u>United Parcel Service</u>
Signature	<u></u>
Date	<u>December 8, 2020</u>

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Name	<u>D'Andrea J. Green</u>
Firm	<u>Quinn Emanuel Urquhart & Sullivan</u>
Title	<u>Paralegal</u>
Representing	<u>United Parcel Service</u>
Signature	<u></u>
Date	<u>December 4, 2020</u>

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Name	<u>Nicholas Powers</u>
Firm	<u>The Brattle Group</u>
Title	<u>Senior Associate</u>
Representing	<u>United Parcel Service</u>
Signature	<u></u>
Date	<u>12.2.2020</u>

CERTIFICATION

The undersigned represents that:

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Name	<u>Kevin Neels</u>
Firm	<u>Brattle Group</u>
Title	<u>Principal</u>
Representing	<u>United Parcel Service</u>
Signature	<u></u>
Date	<u>12/3/20</u>

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Name	<u>Findley Bowie</u>
Firm	<u>The Brattle Group</u>
Title	<u>Senior Research Analyst</u>
Representing	<u>United Parcel Service</u>
Signature	<u><i>C. Findley Bowie III</i></u>
Date	<u>12/3/2020</u>

CERTIFICATION

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Name	<u>Ezra Frankel</u>
Firm	<u>The Brattle Group</u>
Title	<u>Senior Research Analyst</u>
Representing	<u>United Parcel Service</u>
Signature	<u></u>
Date	<u>12/2/2020</u>

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Name	<u>Michael Span</u>
Firm	<u>The Brattle Group</u>
Title	<u>Senior Research Analyst</u>
Representing	<u>United Parcel Service</u>
Signature	<u>Michael P. Span</u>
Date	<u>12/2/2020</u>

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Name	<u>Misha Mubashar Khan</u>
Firm	<u>The Brattle Group</u>
Title	<u>Research Analyst</u>
Representing	<u>United Parcel Service</u>
Signature	<u>MISHA M. KHAN</u>
Date	<u>12/2/2020</u>

CERTIFICATION

The undersigned represents that:

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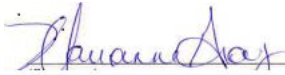
Name	<u>Bogdan Genchev</u>
Firm	<u>The Brattle Group</u>
Title	<u>Associate</u>
Representing	<u>United Parcel Service</u>
Signature	<u><i>Bogdan Genchev</i></u>
Date	<u>12/3/2020</u>

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Name	<u>Marianne Gray</u>
Firm	<u>The Brattle Group</u>
Title	<u>Senior Administrator</u>
Representing	<u>United Parcel Service</u>
Signature	<u></u>
Date	<u>12.2.2020</u>